



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Denial of PECFA  
Reimbursement by the Department of Natural  
Resources to Aastha Petroleum, LLC

Case No. DNR-14-050

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

Pursuant to due notice, hearing was held at Madison, Wisconsin on November 12, 2014, Jeffrey D. Boldt, Administrative Law Judge presiding. After the hearing, a Motion was filed by agreement of the parties. Aastha Petroleum, LLC was allowed to submit additional evidence by affidavit if the same could establish that certain invoices met PECFA reimbursement standards. Aastha by Mr. Singh filed a voluminous amount of material on December 8, 2014. The Department responded on December 26, 2014, asserting that the materials submitted did not meet the stipulated standard for reimbursement because they did not break out PECFA eligible costs and also went beyond the narrow stipulation to allow additional evidence after the hearing.

The parties agreed to brief the remaining issues and the last submittal was received on January 26, 2015.

The PARTIES to this proceeding are identified as follows:

Aastha Petroleum, LLC, by

Raghu B. Singh  
Aastha Petroleum, LLC  
136 West Scott Street  
Fond du Lac, WI 54935-2270

Wisconsin Department of Natural Resources, by

Attorney Lacey L. Cochart  
DNR – Office of Legal Services  
P. O. Box 7921  
Madison, WI 53707-7921

## FINDINGS OF FACT

1. On March 6, 2014, the Wisconsin Department of Natural Resources (the Department or DNR) denied Aastha Petroleum, LLC's (Petitioner or Aastha) appeal for a \$60,000.00 payment from the Petroleum Environmental Cleanup Fund Award (PECFA) program. The Department alleges that Aastha's appeal was incomplete.

2. On May 23, 2014, the Department received an appeal of the denial from Raghu B. Singh on behalf of Aastha by email.

3. On July 15, 2014, the Department forwarded the file for hearing to the Division of Hearings and Appeals.

4. Petitioner purchased the Clark Oil site in question in 2003. *See Exhibit 107*, p. 2. Subsequently, contractors were hired to perform a series of remedial actions and site upgrades. *See Tim Prosa's (Prosa) Testimony*, November 12, 2014. After the PECFA process was started, numerous administrations have worked with the Petitioner, including the Wisconsin Department of Commerce (DOC), Wisconsin Department of Safety and Professional Services (DSPS), and the Wisconsin Department of Natural Resources (DNR). *See Exhibit 109* (Letter from DOC to Aastha); *Exhibit 106* (Letter from DSPS to Aastha); and *Exhibit 104* (Letter from DNR to Aastha).

5. Petitioner has long been aware that additional evidence would need to be provided, and was notified of this by attorney James Polewski of DSPS in April and May of 2013. (*Ex. 106*) After DNR assumed the administration of the PECFA program in July of 2013, Petitioner was again informed about the minimally required documentation for PECFA reimbursement through a series of correspondence. (*Ex. 104*)

6. The DNR agreed to allow the Petitioner an opportunity to submit proposed exhibits even after the hearing. However, none of the proposed exhibits met the requirements to allow payment.

7. The Petitioner's claims fail to meet the Department's requirements of: (1) showing that the submitted expenses were necessary and eligible for PECFA remediation, and (2) proving the expenses were actually paid. As the Department's testimony has established, Petitioner has failed to address the later requirement because adequate proofs of payment have not been presented to the DNR, at the hearing, nor even in his post-hearing submittals.

8. At the November 12, 2014, hearing Petitioner was unable to demonstrate that any claims stemming from invoices generated by Jeff Foust Excavating, Inc. (Jeff Foust) met all of the Department's PECFA requirements. This is because the documentation supporting the Jeff Foust invoices: (1) fail to show that the submitted expenses were necessary for PECFA remediation and (2) do not contain adequate proofs of payment. At the hearing and in prefiled testimony, both Mr. Panzer and Mr. Prosa testified persuasively that it is unclear whether the Jeff Foust expenses are PECFA-eligible because the supporting documentation does not sufficiently break-out costs. *See Prefiled Testimony of Prosa*, p. 2: 61-63. The proofs of payment submitted

by the Petitioner were deficient for this reason as well. *See Id.* Further, as set forth below, the Department cannot reimburse the Petitioner even if the post-hearing documentation is accepted into the record.

9. Invoice # 7743 clearly includes PECFA-ineligible costs, such as work for backfilling tank holes, product line trenches, pea stone, and tank setting. The Department cannot pay these ineligible costs, which could subject the Petitioner to penalties under Wis. Admin. Code NR § 747.30(3). The invoice also does not verify whether the costs were entirely related to PECFA-eligible work; therefore, it cannot be reimbursed as a matter of law. Invoice #7762 is a new invoice that was not originally submitted to the Department. This \$18,000 invoice does not break-out costs in a way that allows the Department or the ALJ to verify PECFA eligibility. Therefore the claim cannot be reimbursed.

Similarly, Invoice # 7781 is an invoice that was not originally submitted to the Department. This invoice is insufficiently itemized, and includes ineligible costs related to site upgrades. These upgrades include: work for backfilling a storm sewer, excavation for a sign base, and the demolition of city sidewalk. Therefore, this claim cannot be reimbursed by the Department and could also generally be subject to penalties under Wis. Admin. Code NR § 747.30(3).

The affidavits from Jeff Foust are also unacceptable. First, they were initially sent to the Petitioner, instead of the Department. Secondly, Petitioner appears to have made modifications to them. The affiant properly notarized the portions of that affidavit that he attested to under oath. These sections referred to invoices that were later attached to the affidavits by the Petitioner. As a matter of policy and sound auditing practices, the Department cannot accept these modified affidavits, nor can the ALJ.

10. At the November 12, 2014, hearing, Petitioner was unable to demonstrate that invoices generated by Waste Management, Inc. (Waste Management) met all of the Department's PECFA requirements. As both Mr. Panzer and Prosa testified, Petitioner provided no proofs of payment, and also failed to provide the Department with a way to determine whether the costs were entirely PECFA-eligible. (Prefiled Testimony of Prosa, p. 2: 61-63.)

11. The Department is especially concerned because numerous site upgrades were being performed at the same time as the remedial activities. Petitioner has not provided evidence showing that the soil taken to the landfills was solely related to PECFA remediation. The Department believes that Petitioner's tendency to include ineligible costs in other invoices highlights the need for this type of evidence. Further, as set forth below, the Department cannot reimburse the Petitioner even if the post-hearing documentation is accepted into the record.

12. Waste Management Invoices #293-000001 and #293-000002 were both addressed at the hearing, and did not meet the Department's PECFA requirements for the reasons discussed above. Nothing in the post-hearing documentation addresses the Department's concerns, other than the affidavits provided by Waste Management, which are unacceptable for the reasons discussed below. Invoice #293-000003

13. Waste Management Invoice # 293-000003 does not meet the requirements of the Department's stipulation to produce affidavits, and has long been available to the petitioner. Without a thorough audit, the Department cannot determine whether the expenses are PECFA eligible. For example, the Department cannot determine whether the soils that were removed were sufficiently contaminated as to be necessary for PECFA remediation. This invoice also suffers from the same problems as the other Waste Management invoices, in that there does not seem to be a way to determine whether the work was entirely related to PECFA remediation.

14. None of the additional evidence submitted by the Petitioner met the stipulated requirements for submission of a discreet set of additional evidence and do not establish that any of these costs were PECFA eligible. Accordingly, none of these documents are admissible under the plain terms of the stipulation. Further, the petitioner had ample time to prepare his case and to call witnesses who would testify to support his assertions. He failed to do so, and did not come close to carrying his burden of proof that any of the costs were PECFA eligible.

### DISCUSSION

Dr. Singh knows how to properly file PECFA reimbursement requests. He has successfully done so in numerous cases around the state. (See Ex. 100) But Aastha did not provide proper documentation for this claim, not even after having been allowed an unusually generous opportunity to submit documentation after the hearing. Instead of focusing on proving his case, the petitioner protests that he is insulted and uses violent language (claiming that his PECFA ethics have been "assassinated") and demanding a high-level audit of his practices. All of this misses the point of this contested case proceeding.

The hearing was Aastha's opportunity to prove its case. Aastha had the burden of proof in this matter and both the DNR and this tribunal have bent over backwards to offer Dr. Singh an opportunity to do so. He simply has not carried his burden of proof in establishing that the invoices submitted were eligible PECFA reimbursement costs as defined in Wis. Stat. § 292.63(4)(b).

Accordingly, the Department's determination must be upheld and the petition for review dismissed.

### CONCLUSIONS OF LAW

1. The Division of Hearings and Appeals has authority to hear contested cases and issue necessary Orders in appeals of PECFA reimbursement request determinations pursuant to Wis. Stat. §§ 227.42 and 227.43.

2. Eligible costs for PECFA reimbursement requests are defined in Wis. Stat. § 292.63(4)(b):

(b) Eligible costs. Except as provided in par. (c) or (cc), eligible costs for an award under par. (a) include actual costs or, if the department establishes a usual and customary cost under par. (cm) for an item, usual and customary costs for the following items:

1. Testing to determine tightness of tanks and lines if the method used is approved by the department.
2. Removal of petroleum products from surface waters, groundwater or soil.
3. Investigation and assessment of contamination caused by a petroleum product storage system or a home oil tank system.
4. Preparation of remedial action plans.
5. Removal of contaminated soils.
6. Soil treatment and disposal.
7. Environmental monitoring.
8. Laboratory services.
9. Maintenance of equipment for petroleum product recovery or remedial action activities.
10. Restoration or replacement of a private or public potable water system.
11. Restoration of environmental quality.
12. Contractor costs for remedial action activities.
13. Inspection and supervision.
14. Other costs identified by the department as necessary for proper investigation, remedial action planning and remedial action activities to meet the requirements of s. 292.11.

3. The petitioner has the burden of proof in this Wis. Stat. § 227.42 review proceeding pursuant to Wis. Admin. Code NR 2.13(3)(b).

4. The petitioner has not carried his burden of proof in establishing that his claim expenses were solely to the actual costs of PECFA related activities as defined above.

ORDER

WHEREFORE IT IS HEREBY ORDERED that the Motion to admit additional evidence be Denied;

IT IS FURTHER ORDERED that, the Department's determination not to reimburse this claim be AFFIRMED, and the petition for review dismissed.

Dated at Madison, Wisconsin on April 21, 2015.

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DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
Jeffrey D. Boldt  
Administrative Law Judge

### NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent and shall be served upon the Secretary of the Department either personally or by certified mail at: 101 South Webster Street, P. O. Box 7921, Madison, WI 53707-7921. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.